IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 8206, 8207 & 8211 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ISHWARBHAI KESHAVBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 8206 of 2002

MR N D Nanavati, Sr.Counsel with Mr BM MANGUKIYA for Petitioner No. 1-5

MS BELA A PRAJAPATI for Petitioner No. 1-5

Mr M A Bukhari, APP for Respondent No. 1

MR AD SHAH for Respondent No. 2

..... for Respondent No. 3-5

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 16/01/2003

COMMON JUDGEMENT

This is a petition filed under section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code') for quashing and settinig aside the FIR filed in DCB police station of Surat City at Surat and registered as CR.No.I/14/2002 for the offences punishable under sections 208, 209, 210, 418, 423, 424, 468, 465, 471, 199, 193 and 120-B of IPC as well as under section 34 of the IPC, 1860.

2. One Pankajbhai Harishchandra Jani, shown as respondent no.2 herein has filed the aforesaid FIR before the Commissioner of Police at Surat, a copy whereof has been placed at Annexure 'A' at page 31 to the petition. The said FIR has been filed by him as the Secretary of Ganesh Cooperative Housing Society Limited. The said FIR has been filed against more than 15 persons named in the said FIR. It relates to the offences said to have been committed by the respondents. The facts are stated in details in the FIR and mainly it has been stated that certain documents have been forged and fabricated by the respondents with a view to obtain certain benefits out of the said documents. It appears that an application has been filed before the learned Civil Judge (SD) at Surat in Special Civil Suit No.159/97 requesting the said Court to take appropriate steps under section 340 of the said Code. There also the allegations are of the same nature and it has been alleged that certain documents have been forged and fabricated by the opponents therein who are petitioners herein.

3. After hearing the learned Advocate for the applicant of the said application, the trial court has passed an order that a preliminary enquiry shall be undertaken on the basis of the said application/complaint referred to hereinabove. The trial court also directed that original record be called for and notice be issued. Thereafter the trial court also directed that Civil Misc.Application No.6/2001 be referred to the learned 7th Jt.Civil Judge (SD) at Surat for preliminary enquiry and there is also direction that the learned Judge shall submit his report on the complaint. The said order was passed on 18.7.2001. Here the main contention of the present petitioners is that when the Civil Court has already undertaken the matter in its hand and when preliminary enquiry is being conducted by the Court, it would not be open to the police investigating machinery to undertake simultaneous and parallel investigation into the matter. On this short ground, the said FIR is sought

to be quashed by the present petitioners.

4. Notice was ordered to be issued and in response to the service of notice, Mr A D Shah, learned Advocate has appeared for the contesting respondents whereas Mr M A Bukhari, learned APP has appeared for the State of Gujarat. E

5. During the course of his argument, Mr N D Nanavati, learned Sr.Counsel appearing with Mr B M Mangukia, learned Advocate for the petitioners has argued at length that when the Civil Court has once undertaken the process of preliminary enquiry referred to hereinabove, it would not be proper, legal, advisable or desirable for the police investigating machinery to undertake parallel and simultaneous investigation into the matter. It is also his argument that the nature of allegations made in the FIR and the nature of allegations made in the aforesaid application before the civil Court are the same and even the documents which are required to be examined in both the matters are also the same. It is, therefore, his argument that there cannot be and should not be a parallel enquiry and investigation by two machineries. It is therefore, his argument that in view of the preliminary enquiry undertaken by the Civil Court, the police machinery should raise its hands and should not be allowed to prosecute a parallel and simultaneous investigation on the strength of the aforesaid FIR which is impugned in this petition.

6. On the other hand, Mr A D Shah, learned Advocate for the contesting respondent has also argued at length that even when a complaint has been filed before a court and when a simultaneous FIR is before the police investigating officer, the police investigating officer is not debarred from prosecuting the investigation in accordance with law.

7. It is also his contention that the enquiry undertaken by the Civil Court as aforesaid is limited to the extent indicated in the application and there the offences are also restricted to those mentioned in the said application i.e. the offence punishable under section 208, 209 and 210 of IPC. It is also his argument that so far as these offences are concerned, it would be only the Court which would be competent to proceed ahead. It is also his argument that a private party would not be in a position to prosecute the petitioners with respect to the said offence. That therefore, the said application was required to be filed before the said Court for the purpose of the said limited offence,

whereas the FIR filed before the Commissioner of Police at Surat and referred to the DCB, Surat, the scope of investigation is larger and the offences punishable under sections 418, 423, 465, 468 and 471 of IPC etc. are also included in it. That in that view of the matter, the FIR may not be quashed and both may not be allowed to have simultaneous prosecution.

8. It is true that a complaint has been made to the Civil Court for taking action against the persons named in the applications. A copy of the said application is also found at page 91 to the petition. There cannot be any dispute about the same. It is also not much in dispute that the documents covered by the said application and the documents which are subject matter of the FIR which are impugned in the present petition are also the same. The question which arises for consideration is as to whether there can be and there should be simultaneous investigation by police and enquiry by the Court.

9. On this aspect of the case, certain citations have been shown. It would be worthwhile to refer them for the purpose of completing the judgment.

10. In the case of State of U.P. v. Suresh Chandra Srivastava, AIR 1984 SC 1108), it has been held as follows:

"It is well settled that where an accused commits some offences which are separate and distinct from those contained in section 195, Section 195 will affect, only the offences mentioned therein unless such offences form an integral part so as to amount to offences committed as a part of the same transaction, in which case the other offences also would fall within the ambit of section 195 Cr.P.C. Thus, where the accused had removed the used court-fee stamps and reused some of them in new cases and they were charaged for the offences under sections 262, 263, 467, 471, 420, 120-B IPC, however, on the faacts narrated by the Registrar of the High Court in his complaint no offence under sections 467, 471 and 12-B, IPC, was at all revealed, consequently the proceedings against the accused were quashed by the High Court under section 482 as far as offence under sections 467, 471 and 12-B IPC were concerned, not because they were covered by section 195 of Cr.P.C. but because allegations contained in the complaint did not constitute

those offences and the High Court further directed that other offences mentioned above did not require a complaint under section 195 and would have to be tried, the order of the High Court was legal and fully justified. The fact that some persons aided and abetted the detaching of the used stamps from the old files and re-using them in the other cases does not involve any process of forgery or use of a forged document."

There it was noticed that the offences punishable under section 467, 471 read with section 120-B of IPC were not revealed at all and, therefore, the proceedings against the accused were quashed by the High Court under section 482 of the Code as far as those offences were concerned. However, there the decision was not recorded on the ground of bar under section 195 of the Code but on the ground that the offences were not constituted at all.

10. In the case of Sushil Kumar vs. State of Haryana (AIR 1988 SC 419), the matter was on a different footing. The accused had produced copy of a partnership deed said to have been forged by him and the original of partnership deed that was forged, was not produced in the court and, therefore, it was observed that the bar imposed by section 195(1)(b)(ii) would not apply.

11. In the case of State of Punjab v. Raj Singh & Anr. (JT 1998(1) SC 145 , it has been observed that the statutory powers of police to investigate under the code are not controlled or circumscribed by section 195 of the Code. It is further observed that Section 195 of the Code operates at a stage when the Court intends to take cognizance of an offence under section 190(1) of the Code. The pertinent observations in para 2 may be reproduced for ready reference:

"We are unable to sustain the impugned order of the High Court quashing the FIR lodged against the respondents alleging commission of offences under sections 419, 420, 467 and 468 IPC by them in course oaf the proceeding of a civil suit, on the ground that section 195 (1) (b)(ii) Cr.P.C. prohibited entertainment of and investigation into the same by the police. From a plain reading of section 195 Cr.P.C. it is manifest that it comes intoo operation at the stage when the court intends to take cognizance of an offence under section 190(1) Cr.P.C; and it has

> nothiing to do with the statutory power of the police to investigate into an FIR which discloses a cognizable offence, in accordance with chapter XII of the code even if the offence is alleged to have been committed in or in relation to, any proceeding in court. In other words, the statutory power of the police to investigate under the code is not in any way controlled or circumscribed by section 195 Cr.P.C. it is of course true that upon the charge sheet (challan), if any, filed on completion of the investigation into such an offence the court from filing a complaint for the offence on the basis of the FIR (filed by the aggrieved private party) and the materials collected during investigation, provided it forms the requisite opinion and follows the procedure laid down in section 340 Cr.P.C. The judgment of this court in Gopal Krishna Menon and Anr. v. D. Raja Reddy (AIR 1983 SC 1053) on which the High Court relied, has no manner of application to the facts of the instant case for there cognizance was taken on a private complaint even though the offence of forgery was committed in respect of a money receipt produced in the Civil Court and hence it was held that at the court could not take cognizance on such a complaint in view of section 195 Cr.P.C."

12. In the case of M S Ahlawata v. State of Haryana & Anr.(JT 1999 (8) SC 530), it was observed that the provisions made in section 195 of the Code are mandatory and no conviction under section 193 of IPC could be passed without following the procedure laid down in section 340 of the Code.

13. The submission of the learned Advocate for the contesting respondent is that in view of the aforesaid provisions in law and in view of the aforesaid judgment it was necessary for the person concerned to make an application before the Court concerned for an order under section 340 of the Code. It is however, his contention that so far as the remaining offences are concerned, the investigating officer has every power and duty to investigate these cognizable offences.

14. It is not much in dispute that the offences alleged against the petitioners are cognizable offences and once a FIR is received and registered as a cognizable offence by the officer in-charge of a police station, then it becomes his duty to investigate into the said

offence which are shown to be cognizable.

15. If at the end of the investigation, the investigating police officer finds that no offence is made out, then appropriate report under section 169 can always be submitted by the said officer. On the other hand, in case if he is of an opinion that if some offences are found to have committed, then, he would naturally file report under section 173 of the Code. Similarly, the investigating police officer has also power, function and duties to pray for 'A' summary, 'B' summary with prosecution, 'B' summary without prosecution, 'C' summary or 'NC' summary as the case may be. However, the law does not prevent the police investigating officer from investigating into a cognizable offence simply because some enquiry is pending before a Court which may be a Civil Court or even a criminal Court.

16. In the case of Manohar M Galani v. Ashok N Advani & Anr., [JT 1999(9) SC 142], following pertinent observation can be gathered from para 4:

> "4. So far as the public interest petition is concerned, not only the counsel for both sides agreed that the same ought not to have been set aside but we also fail to understand how the High Court in exercise of its power under extraordinary jurisdiction can interfere with a co-lateral proceeding initiated by the High Court itself in an application filed in public interest. There cannot be any dispute that the facts revealed a serious scandal in the functioning of some subordinate Court in the State of Gujarat and, therefore, the High Court took cognizance of the matter and directed inquiry to be conducted, and on the basis of the said inquiry, it was open for the High Court to issue necessary directions and at the stage the impugned order has emanated. In our considered opinion, the order in the impugned judgment setting aside the aforesaid public interest petition is erroneous and we, therefore, set aside the said order and direct that the public interest petition should be considered by the High Court on merits on the basis of the reports submitted to the Court and appropriate directions be given whatever the court thinks fit.

17. This would again mean that simply because a complaint is pending before a court, it would not debar

the police investigating officer from investigating into the case. Moreover, this is not the stage at which the court is required to take cognizance. The provisions contained in section 195 of the Code will come into play only when the court is required to take cognizance of an offence. At that stage, if the court finds that there are certain offences in respect of which the court would not be empowered to take cognizance, then appropriate order can be passed by the court concerned. But simply because there are certain provisions under which a court can take cognizance only in certain contingency, the investigating police officer is never debarred from prosecuting his investigation in respect of a cognizable offence.

18. Even further observations have been made in para 5 of the said judgment which are reproduced for ready reference hereunder:

> "5. So far as the quashiing of the complaints and inquiry on the basis of FIR registered by the complainant are concerned, we also find that the High Court was not justified in interfering with the same and quashing the proceedings by an elaborate discussion on the merits of the matter and in coming to the conclusion that Section 195 of the Code of Criminal Procedure will be a bar. In our opinion, it was rather premature for the High court to come to the aforesaid conclusion and on account of the orders passed, the investigation into several serious allegations are beiing throttled. We, therefore, set aside the orders quashing the two complaints and the investigation made thereunder and direct that those cases may proceed in accordance with law. Needless to mention that our setting aside the impugned order does not tantamount to expression of our opinion on merits and the accused, therefore, may not feel aggrieved and are entitled to take any appropriate remedy that is available to them under the law."

Accordingly on a closed reading of the provisions made in sections 193 and 195 of the Code and looking to the provisions made in Sections 169 and 173 of the Code, it is amply clear that in a simultaneous and parallel enquiry by the Civil Court and investigation by the police investigating officers are not barred by law and I have not been shown any law preventing the police investigating officer from investigating a cognizable offence simply because a complaint has been filed before

a court. Even section 210 of the Code will also be important for the purpose of a just decision in the matter. The said provisions made in section 210 of the Code is reproduced for ready reference as follows:

> "210. (1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case) it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducted the investigation."

Even this provision makes it clear that when a case has been instituted otherwise than a police report and if it is found that an investigation by a police officer is in progress and the offence involved in both are also the same, then he has to stay enquiry or the trial and call for the report in the matter from the police investigating officer. This would further mean that it was never the intention of the legislature that the police investigating officers should raise their hands with respect to the cognizable offence under their investigation simply because some enquiry or trial is pending before a criminal court.

19. I am, therefore, of the opinion that simply because an application has been made before the Civil Court at Surat for taking action against the petitioners under section 340 of the Code, the Police investigating officer cannot be prevented from prosecuting the investigation. It is more so, when the offence stated in the FIR and which are under the investigation before the police investigating officer have a wider scope having regard to the nature of the offences mentioned in the FIR and said to have been committed by the petitioners. In above view of the matter, again I am of the opinion that the police investigating officer cannot be prevented from investigating into the offences mentioned in the FIR simply because of an application is pending before the Civil Court for enquiry under section 340 of the said Code. No other point has been raised in support of the present petition. In above view of the matter, when two machineries can legally proceed ahead simultaneously or at least when the police investigation can proceed ahead despite the pendency of an enquiry before the Civil Court

under section 340 of the Code, then in that event, the present FIR cannot be quashed and the investigating police officer cannot be deprived of his duty to investigate into cognizable offences stated in the FIR. If at the end of the investigation some reports are placed before the court concerned, then it would be open to the court concerned to decide as to whether or not it would be open to the court to take cognizance of the offence in respect of which report has been submitted. In above view of the matter, there is no merit in the present petition and therefore, the same is required to be dismissed.

20. For the foregoing reasons, these petitions are ordered to be dismissed. Notice discharged.

16.1.2003 [D P Buch, J.]

msp

FURTHER ORDER

After the pronouncement of the above order, learned Advocate for the petitioners states that the petitioners desire to go to the higher forum and, therefore, the interim relief granted by the trial court may be extended for a period of six weeks. After having heard the learned Advocate for the petitioners as well as for the respondent and the learned APP, the interim relief granted earlier is extended for a further period of four weeks from today.

16.1.2003 [D P Buch, J.]
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